

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Kenneth Irish, Denise Marshall, Allen
Moore and Scott Stillwell,

Civil File No. 08-469-slc

Plaintiffs,

v.

BNSF Railway Company, Burlington
Northern Santa Fe Corporation, William
Barbee, Francis A. Weber, John Doe #1,
John Doe #2, ABC Insurance Company
and DEF Insurance Company,

ANSWER OF DEFENDANTS
BNSF RAILWAY COMPANY,
BURLINGTON NORTHERN
SANTA FE CORPORATION,
WILLIAM BARBEE AND
FRANCIS A. WEBER TO
PLAINTIFFS' AMENDED
COMPLAINT

Defendants.

Defendants BNSF Railway Company, Burlington Northern Santa Fe Corporation,
William Barbee and Francis A. Weber (collectively “BNSF”) answer the amended
complaint as follows:

1. Generally deny except as admitted or qualified.
2. As to paragraph 7, deny and state that the alleged water invasions were an
Act of God.
3. As to paragraphs 14, 15 and 16, admit only that Defendant BNSF Railway
Company is a wholly owned subsidiary of Burlington Northern Santa Fe Corporation and
that Burlington Northern Santa Fe Corporation is a Delaware corporation with a principal
place of business in Texas.
4. As to paragraph 17, admit only that William Barbee and Francis A. Weber
are employees of BNSF and residents of Wisconsin.

5. As to paragraphs 2, 6, 10, 11, 12, and 13, lack knowledge sufficient to form a belief as to the truth of the allegations.

AFFIRMATIVE DEFENSES

6. The amended complaint fails to state a claim upon which relief can be granted.

7. The amended complaint is completely preempted and substantively preempted by federal and state law.

8. Plaintiffs assumed the risk.

9. Plaintiffs failed to mitigate their damages.

10. Some or all of plaintiffs' injuries were caused by independent or intervening causes.

11. Venue is improper in Grant County.

12. William Barbee, Francis A. Weber, John Doe #1 and John Doe #2 have been fraudulently joined as defendants.

Dated: June 17, 2009

BRIGGS AND MORGAN, P.A.

By: s/ Timothy R. Thornton

Timothy R. Thornton (#109630)

Robin Caneff Gipson (#293428)

Molly M. Borg (#0331922)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2157

(612) 977-8400

**ATTORNEYS FOR BNSF RAILWAY
COMPANY, BURLINGTON
NORTHERN SANTA FE
CORPORATION, WILLIAM
BARBEE AND FRANCIS WEBER**